



General Assembly

February Session, 2002

***Raised Bill No. 406***

LCO No. 1606

Referred to Committee on Public Safety

Introduced by:  
(PS)

***AN ACT CONCERNING USE OF A COMPUTER TO COMMIT CRIMES  
AGAINST CHILDREN AND CRIMINAL INVESTIGATION  
TECHNOLOGY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2002*) (a) A person is guilty of  
2       criminal use of a computer when such person intentionally or  
3       recklessly uses a computer system, as defined in section 53a-250 of the  
4       general statutes, as the means to commit a crime, as defined in section  
5       53a-24 of the general statutes.

6       (b) Criminal use of a computer is a class A misdemeanor.

7       Sec. 2. Section 52-570b of the general statutes is repealed and the  
8       following is substituted in lieu thereof (*Effective October 1, 2002*):

9       (a) Any aggrieved person who has reason to believe that any other  
10      person has been engaged, is engaged or is about to engage in an  
11      alleged violation of any provision of section 53a-251 may bring an  
12      action against such person and may apply to the Superior Court for: (1)  
13      An order temporarily or permanently restraining and enjoining the  
14      commencement or continuance of such act or acts; (2) an order

15 directing restitution; or (3) an order directing the appointment of a  
16 receiver. Subject to making due provisions for the rights of innocent  
17 persons, a receiver shall have the power to sue for, collect, receive and  
18 take into [his] the receiver's possession any property which belongs to  
19 the person who is alleged to have violated any provision of section  
20 53a-251 and which may have been derived by, been used in or aided in  
21 any manner such alleged violation. Such property shall include goods  
22 and chattels, rights and credits, moneys and effects, books, records,  
23 documents, papers, choses in action, bills, notes and property of every  
24 description including all computer system equipment and data, and  
25 including property with which such property has been commingled if  
26 it cannot be identified in kind because of such commingling. The  
27 receiver shall also have the power to sell, convey and assign all of the  
28 foregoing and hold and dispose of the proceeds thereof under the  
29 direction of the court. Any person who has suffered damages as a  
30 result of an alleged violation of any provision of section 53a-251, and  
31 submits proof to the satisfaction of the court that [he] such person has  
32 in fact been damaged, may participate with general creditors in the  
33 distribution of the assets to the extent [he has sustained] of such  
34 person's out-of-pocket losses. The court shall have jurisdiction of all  
35 questions arising in such proceedings and may make such orders and  
36 judgments therein as may be required.

37 (b) The court may award the relief applied for or such other relief as  
38 it may deem appropriate in equity.

39 (c) Independent of or in conjunction with an action under subsection  
40 (a) of this section, any person who suffers any injury to person,  
41 business or property may bring an action for damages against a person  
42 who is alleged to have violated any provision of section 53a-251. The  
43 aggrieved person shall recover actual damages and damages for unjust  
44 enrichment not taken into account in computing damages for actual  
45 loss, and treble damages where there has been a showing of wilful and  
46 malicious conduct.

47 (d) Proof of pecuniary loss is not required to establish actual  
48 damages in connection with an alleged violation of subsection (e) of  
49 section 53a-251 arising from misuse of private personal data.

50 (e) In any civil action brought under this section, the court shall  
51 award to any aggrieved person who prevails, reasonable costs and  
52 reasonable attorney's fees.

53 (f) The filing of a criminal action against a person is not a  
54 prerequisite to the bringing of a civil action under this section against  
55 such person.

56 (g) A civil action may be brought under this section against the state  
57 or any political subdivision thereof and the defense of governmental  
58 immunity shall not be available in any such action. The rights and  
59 liability of the state or any political subdivision thereof in each such  
60 action shall be coextensive with and shall equal the rights and liability  
61 of private persons in like circumstances.

62 (h) No civil action under this section may be brought but within  
63 three years from the date the alleged violation of section 53a-251 is  
64 discovered or should have been discovered by the exercise of  
65 reasonable diligence.

66 (i) For the purposes of this section, "person" means any individual,  
67 corporation, limited liability company, trust, partnership, incorporated  
68 or unincorporated association or any other legal or governmental  
69 entity including any state or municipal entity or public official.

70 Sec. 3. Section 53a-193 of the general statutes is repealed and the  
71 following is substituted in lieu thereof (*Effective October 1, 2002*):

72 The following definitions are applicable to this section and sections  
73 53a-194 to 53a-210, inclusive, as amended by this act:

74 [(1) Any material or performance is "obscene" if, (A) taken as a  
75 whole, it predominantly appeals to the prurient interest, (B) it depicts

76 or describes in a patently offensive way a prohibited sexual act, and  
77 (C) taken as a whole, it lacks serious literary, artistic, educational,  
78 political or scientific value. Predominant appeal shall be judged with  
79 reference to ordinary adults unless it appears from the character of the  
80 material or performance or the circumstances of its dissemination to be  
81 designed for some other specially susceptible audience. Whether a  
82 material or performance is obscene shall be judged by ordinary adults  
83 applying contemporary community standards. In applying  
84 contemporary community standards, the state of Connecticut is  
85 deemed to be the community.

86 (2) Material or a performance is "obscene as to minors" if it depicts a  
87 prohibited sexual act and, taken as a whole, it is harmful to minors. For  
88 purposes of this subsection: (A) "Minor" means any person less than  
89 seventeen years old as used in section 53a-196 and less than sixteen  
90 years old as used in sections 53a-196a, 53a-196b and 53a-196c and (B)  
91 "harmful to minors" means that quality of any description or  
92 representation, in whatever form, of a prohibited sexual act, when (i) it  
93 predominantly appeals to the prurient, shameful or morbid interest of  
94 minors, (ii) it is patently offensive to prevailing standards in the adult  
95 community as a whole with respect to what is suitable material for  
96 minors, and (iii) taken as a whole, it lacks serious literary, artistic,  
97 educational, political or scientific value for minors.

98 (3) "Prohibited sexual act" means erotic fondling, nude performance,  
99 sexual excitement, sado-masochistic abuse, masturbation or sexual  
100 intercourse.

101 (4) "Nude performance" means the showing of the human male or  
102 female genitals, pubic area or buttocks with less than a fully opaque  
103 covering, or the showing of the female breast with less than a fully  
104 opaque covering of any portion thereof below the top of the nipple, or  
105 the depiction of covered male genitals in a discernibly turgid state in  
106 any play, motion picture, dance or other exhibition performed before  
107 an audience.

108       (5) "Erotic fondling" means touching a person's clothed or unclothed  
109       genitals, pubic area, buttocks, or if such person is a female, breast.

110       (6) "Sexual excitement" means the condition of human male or  
111       female genitals when in a state of sexual stimulation or arousal.

112       (7) "Sado-masochistic abuse" means flagellation or torture by or  
113       upon a person clad in undergarments, a mask or bizarre costume, or  
114       the condition of being fettered, bound or otherwise physically  
115       restrained on the part of one so clothed.

116       (8) "Masturbation" means the real or simulated touching, rubbing or  
117       otherwise stimulating a person's own clothed or unclothed genitals,  
118       pubic area, buttocks, or, if the person is female, breast, either by  
119       manual manipulation or with an artificial instrument.

120       (9) "Sexual intercourse" means intercourse, real or simulated,  
121       whether genital-genital, oral-genital, anal-genital or oral-anal, whether  
122       between persons of the same or opposite sex or between a human and  
123       an animal, or with an artificial genital.

124       (10) "Material" means anything tangible which is capable of being  
125       used or adapted to arouse prurient, shameful or morbid interest,  
126       whether through the medium of reading, observation, sound or in any  
127       other manner. Undeveloped photographs, molds, printing plates, and  
128       the like, may be deemed obscene notwithstanding that processing or  
129       other acts may be required to make the obscenity patent or to  
130       disseminate it.

131       (11) "Performance" means any play, motion picture, dance or other  
132       exhibition performed before an audience.

133       (12) "Promote" means to manufacture, issue, sell, give, provide,  
134       lend, mail, deliver, transfer, transmit, publish, distribute, circulate,  
135       disseminate, present, exhibit, advertise, produce, direct or participate  
136       in.

137 (13) "Child pornography" means any material involving a live  
138 performance or photographic or other visual reproduction of a live  
139 performance which depicts a minor in a prohibited sexual act.]

140 (1) "Child pornography" means any visual depiction, including any  
141 photograph, film, video, picture or computer, as defined in subdivision  
142 (2) of section 53a-250, or computer-generated image or picture,  
143 whether made or produced by electronic, mechanical or other means,  
144 of sexually explicit conduct, where (A) the production of such visual  
145 depiction involves the use of a minor engaging in sexually explicit  
146 conduct; (B) such visual depiction is, or appears to be, of a minor  
147 engaging in sexually explicit conduct; (C) such visual depiction has  
148 been created, adapted or modified to appear that an identifiable minor  
149 is engaging in sexually explicit conduct; or (D) such visual depiction is  
150 advertised, promoted, presented, described or distributed in such a  
151 manner that conveys the impression that the material is or contains a  
152 visual depiction of a minor engaging in sexually explicit conduct.

153 (2) "Harmful to minors" means that quality of any description or  
154 representation, in whatever form, of sexually explicit conduct, when  
155 (A) it predominantly appeals to the prurient, shameful or morbid  
156 interest of minors, (B) it is patently offensive to prevailing standards in  
157 the adult community as a whole with respect to what is suitable  
158 material for minors, and (C) taken as a whole, it lacks serious literary,  
159 artistic, educational, political or scientific value for minors.

160 (3) "Identifiable minor" means a person (A) (i) who was a minor at  
161 the time the visual depiction was created, adapted or modified, or (ii)  
162 whose image as a minor was used in creating, adapting or modifying  
163 the visual depiction; and (B) who is recognizable as an actual person  
164 by the person's face, likeness or other distinguishing characteristic,  
165 such as a unique birthmark or other recognizable feature. This  
166 subdivision shall not be construed to require proof of the actual  
167 identity of the identifiable minor.

168 (4) "Material" means anything tangible which is capable of being

169 used or adapted to arouse prurient, shameful or morbid interest,  
170 whether through the medium of reading, observation, sound or in any  
171 other manner. "Material" includes visual depictions, undeveloped  
172 photographs, molds, printing plates, and the like, which may be  
173 deemed obscene or to be child pornography notwithstanding that  
174 processing or other acts may be required to make the obscenity or  
175 child pornography patent or to disseminate it.

176 (5) "Minor" means any person under the age of eighteen years.

177 (6) A material or performance is "obscene" if (A) taken as a whole, it  
178 predominantly appeals to the prurient interest, (B) it depicts or  
179 describes in a patently offensive way sexually explicit conduct, and (C)  
180 taken as a whole, it lacks serious literary, artistic, educational, political  
181 or scientific value. Predominant appeal shall be judged with reference  
182 to ordinary adults unless it appears from the character of the material  
183 or performance or the circumstances of its dissemination to be  
184 designed for some other specially susceptible audience. Whether a  
185 material or performance is obscene shall be judged by ordinary adults  
186 applying contemporary community standards. In applying  
187 contemporary community standards, the state of Connecticut is  
188 deemed to be the community.

189 (7) A material or performance is "obscene as to minors" if it depicts  
190 sexually explicit conduct and, taken as a whole, it is harmful to minors.

191 (8) "Performance" means any play, motion picture, dance, visual  
192 depiction or other exhibition performed before an audience or  
193 transmitted via any medium.

194 (9) "Produce" means to produce, direct, manufacture, issue, publish  
195 or advertise.

196 (10) "Promote" means to manufacture, issue, sell, give, provide,  
197 lend, mail, deliver, transfer, transmit, publish, distribute, circulate,  
198 disseminate, present, exhibit, advertise, produce, direct or participate

199 in and includes to transmit by computer network, as defined in section  
200 53a-250.

201 (11) "Sexually explicit conduct" means actual or simulated (A)  
202 sexual intercourse, including genital-genital, oral-genital, anal-genital  
203 or oral-anal, whether between persons of the same or opposite sex, or  
204 with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or  
205 masochistic abuse, or (E) lascivious exhibition of the genitals or pubic  
206 area of any person.

207 (12) "Visual depiction" includes undeveloped film and videotape  
208 and data, as defined in subdivision (8) of section 53a-250, that is  
209 capable of conversion into a visual image and includes encrypted data.

210 Sec. 4. Section 53a-196c of the general statutes is repealed and the  
211 following is substituted in lieu thereof (*Effective October 1, 2002*):

212 (a) A person is guilty of importing child pornography when, with  
213 intent to promote child pornography, [he] such person knowingly  
214 imports or causes to be imported into the state any child pornography  
215 of known content and character.

216 (b) Importation of two or more copies of any publication or visual  
217 depiction containing child pornography shall be prima facie evidence  
218 that such publications or visual depictions were imported with intent  
219 to promote child pornography.

220 (c) Importing child pornography is a class C felony.

221 Sec. 5. Section 35-11i of the general statutes is repealed and the  
222 following is substituted in lieu thereof (*Effective October 1, 2002*):

223 (a) Subject to the provisions of section 35-11k, as amended by this  
224 act, any person who (1) uses in Connecticut, without the consent of the  
225 registrant, any reproduction, counterfeit, copy or colorable imitation of  
226 a mark registered under this chapter in connection with the sale,  
227 offering for sale, distribution or advertising of any goods or services on



228 or in connection with which such use is likely to cause confusion or to  
229 cause mistake or to deceive as to the source or origin of such goods or  
230 services, or (2) reproduces, counterfeits, copies or colorably imitates  
231 any such mark and applies such reproduction, counterfeit, copy or  
232 colorable imitation to labels, signs, prints, packages, wrappers,  
233 receptacles or advertisements intended to be used in commerce upon  
234 or in connection with the sale, offering for sale, distribution or  
235 advertising of goods or services on or in connection with which such  
236 use is likely to cause confusion or to cause mistake or to deceive  
237 purchasers, shall be liable in a civil action by the registrant for any or  
238 all of the remedies provided in subsection (b) of this section, except  
239 that under subdivision (2) of this subsection the registrant shall not be  
240 entitled to recover profits or damages unless the acts have been  
241 committed with the intent to cause confusion or to cause mistake or to  
242 deceive.

243 (b) Any registrant of a mark registered under this chapter may  
244 proceed by suit to enjoin the wrongful manufacture, use, display or  
245 sale of any reproduction, counterfeit or imitation thereof and any court  
246 of competent jurisdiction may grant injunctions to restrain such  
247 manufacture, use, display or sale as may be deemed just and  
248 reasonable, and may require the defendants to pay to such registrant  
249 all profits derived from, or all damages suffered by reason of, such  
250 wrongful manufacture, use, display or sale or both such profits and  
251 damages; and such court may also order that any such reproduction,  
252 counterfeit or imitation in the possession or under the control of any  
253 defendant be delivered to an officer of the court to be destroyed, or to  
254 the complainant. The court, in its discretion, may enter judgment for  
255 an amount not to exceed three times such profits and damages and a  
256 reasonable attorney's fee of the prevailing party in such cases where  
257 the court finds the other party committed such wrongful acts with  
258 knowledge or in bad faith or otherwise as according to the  
259 circumstances of the case. The enumeration of any right or remedy  
260 herein shall not affect a registrant's right to prosecute under any penal  
261 law of this state.

(c) The registrant of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the registrant's mark becomes famous, which causes dilution of the distinctive quality of the registrant's mark, and to obtain such other relief as is provided in this subsection. In determining whether a mark is famous, a court may consider factors including, but not limited to the following: (1) The degree of inherent or acquired distinctiveness of the mark in this state; (2) the duration and extent of use of the mark in connection with the goods and services; (3) the duration and extent of advertising and publicity of the mark in this state; (4) the geographical extent of the trading area in which the mark is used; (5) the channels of trade for the goods or services with which the registrant's mark is used; (6) the degree of recognition of the registrant's mark in its and in the other's trading areas and channels of trade in this state; and (7) the nature and extent of use of the same or similar mark by third parties. The registrant shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user wilfully intended to trade on the registrant's reputation or to cause dilution of the registrant's mark. If such wilful intent is proven, the registrant shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(d) This section shall not apply to law enforcement officials in the lawful performance of their duties.

Sec. 6. Section 35-11j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2002*):

(a) Any person who, for [himself] on such person's own behalf or on behalf of any other person, procures the filing or registration of any mark in the office of the Secretary of the State under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in

294 consequence of such filing or registration, to be recovered by or on  
295 behalf of the party injured thereby in any court of competent  
296 jurisdiction.

297 (b) This section shall not apply to law enforcement officials in the  
298 lawful performance of their duties.

299 Sec. 7. Section 35-11k of the general statutes is repealed and the  
300 following is substituted in lieu thereof (*Effective October 1, 2002*):

301 Nothing in this chapter shall adversely affect the rights or the  
302 enforcement of rights in marks or trade names acquired in good faith  
303 at any time at common law. This section shall not apply to law  
304 enforcement officials in the lawful performance of their duties.

305 Sec. 8. Section 54-41a of the general statutes is repealed and the  
306 following is substituted in lieu thereof (*Effective October 1, 2002*):

307 The following words and phrases, as used in this chapter, shall have  
308 the following meanings, unless the context otherwise requires:

309 (1) "Wire communication" means any communication made in  
310 whole or in part through the use of facilities for the transmission of  
311 communications by the aid of telephone [or telegraph] wire, cable or  
312 other like connection between the point of origin and the point of  
313 reception, including the use of such connection in a switching station,  
314 furnished or operated by any person engaged as a common carrier in  
315 providing or operating such facilities for the transmission of intrastate,  
316 interstate or foreign communications and such term includes electronic  
317 storage of such communication;

318 (2) "Intercept" means the [intentional overhearing or recording of a  
319 wire] aural or other acquisition of the contents of any wire, oral or  
320 electronic communication through the use of any electronic,  
321 mechanical or other device;

322 (3) "Electronic, mechanical or other device" means any device or

323 apparatus which can be used to intercept a wire communication other  
324 than (A) any telephone or telegraph instrument, equipment or facility,  
325 or any component thereof (i) furnished to the subscriber or used by a  
326 communications common carrier in the ordinary course of its business  
327 and being used by the subscriber or user in the ordinary course of its  
328 business, or (ii) being used by a communications common carrier in  
329 the ordinary course of its business, (B) a hearing aid or similar device  
330 being used to correct subnormal hearing to not better than normal;

331 (4) "Person" means any officer, agent or employee of the state of  
332 Connecticut or any political subdivision thereof, and any individual,  
333 partnership, association, joint stock company, trust, limited liability  
334 company or corporation;

335 (5) "Investigative officer" means (A) any officer of the Connecticut  
336 state police, (B) the chief inspector or any inspector in the Division of  
337 Criminal Justice who is empowered by law to conduct investigations  
338 of or to make arrests for offenses enumerated in this chapter, (C) any  
339 municipal police officer who has been duly sworn as a special state  
340 police officer under the provisions of section [29-177 and who is  
341 currently assigned to the state-wide narcotics task force or the state-  
342 wide organized crime investigative task force] 29-10 or other person  
343 who has otherwise been specifically authorized by the Commissioner  
344 of Public Safety and is acting under the direct authority of the  
345 Connecticut state police, and (D) any attorney authorized by law to  
346 prosecute or participate in the prosecution of offenses enumerated in  
347 this chapter;

348 (6) "Law enforcement officer" means any officer of any organized  
349 police department of this state or of the state police of any other state,  
350 an official of the [Federal Bureau of Investigation, Drug Enforcement  
351 Administration or United States Customs Service] United States  
352 government authorized to conduct criminal investigations and make  
353 arrests, or the United States attorney for the district of Connecticut or a  
354 person designated by him in writing to receive the contents of any

355 wire, oral or electronic communication or evidence derived therefrom;

356 (7) "Contents", when used with respect to any wire, oral or  
357 electronic communication, means and includes any information  
358 concerning the [identity of the parties to such communication or the  
359 existence,] substance, purport or meaning of that communication;

360 (8) "Panel of judges" or "panel" means any panel or panels of three  
361 Superior Court judges specifically designated by the Chief Justice of  
362 the Supreme Court from time to time to receive applications for, and to  
363 enter orders authorizing, interceptions of wire, oral or electronic  
364 communications in accordance with the provisions of this chapter;

365 (9) "Communication common carrier" [means any person engaged  
366 as a common carrier for hire in the transmission of communications by  
367 wire or radio] shall have the same meaning as the term "common  
368 carrier" in Section (H) of Title 47 of the United States Code;

369 (10) "Aggrieved person" means a person who was a party to any  
370 intercepted wire communication, a person against whom the  
371 interception was directed, a person named in any order authorizing an  
372 interception, or a person having a property interest in any premises  
373 involved in any interception;

374 (11) "Oral communication" means any oral communication uttered  
375 by a person exhibiting an expectation that such communication is not  
376 subject to interception under circumstances justifying such  
377 expectation, but such term does not include any electronic  
378 communication;

379 (12) "Legally privileged communications", when used with respect  
380 to any wire, oral or electronic communication, refers to  
381 communications between a licensed physician and patient, an  
382 attorney-at-law and client or a practicing clergyman and parishioner;

383 (13) "Electronic communication" means any transfer of signs,  
384 signals, writing, images, sounds, data or intelligence of any nature

385 transmitted in whole or in part by a wire, radio, electromagnetic,  
386 photoelectronic or photooptical system within, from or to the state, but  
387 does not include (A) any wire or oral communication; (B) any  
388 communication made through a tone-only paging device; (C) any  
389 communication from a tracking device; or (D) electronic funds transfer  
390 information stored by a financial institution in a communications  
391 system used for the electronic storage and transfer of funds;

392 (14) "User" means any person or entity who (A) uses an electronic  
393 communication service; and (B) is duly authorized by the provider of  
394 such service to engage in such use;

395 (15) "Electronic communications system" means any wire, radio,  
396 electromagnetic, photooptical or photoelectronic facilities for the  
397 transmission of electronic communications, and any computer facilities  
398 or related electronic equipment for the electronic storage of such  
399 communications;

400 (16) "Electronic communication service" means any service which  
401 provides to users thereof the ability to send or receive wire or  
402 electronic communications;

403 (17) "Readily accessible to the general public" means, with respect to  
404 a radio communication, that such communication is not (A) scrambled  
405 or encrypted; (B) transmitted using modulation techniques whose  
406 essential parameters have been withheld from the public with the  
407 intention of preserving the privacy of such communication; (C) carried  
408 on a subcarrier or other signal subsidiary to a radio transmission; (D)  
409 transmitted over a communication system provided by a common  
410 carrier, unless the communication is a tone-only paging system; or (E)  
411 transmitted on frequencies allocated under Part 25, Subpart D, E or F  
412 of Part 74, or Part 94 of the rules of the Federal Communications  
413 Commission, unless, in the case of a communication transmitted on a  
414 frequency allocated under said Part 74 that is not exclusively allocated  
415 to broadcast auxiliary services, the communication is a two-way voice  
416 communication by radio;

417     (18) "Electronic storage" means (A) any temporary, intermediate  
418     storage of a wire or electronic communication incidental to the  
419     electronic transmission thereof; and (B) any storage of such  
420     communication by an electronic communication service for purposes  
421     of back-up protection of such communication; and

422     (19) "Aural transfer" means a transfer containing the human voice at  
423     any point between and including the point of origin and the point of  
424     reception.

425     Sec. 9. Section 54-41b of the general statutes is repealed and the  
426     following is substituted in lieu thereof (*Effective October 1, 2002*):

427     The Chief State's Attorney or the state's attorney for the judicial  
428     district in which the interception is to be conducted may make  
429     application to a panel of judges for an order authorizing the  
430     interception of any wire communication by investigative officers  
431     having responsibility for the investigation of offenses as to which the  
432     application is made when such interception may provide evidence of  
433     the commission of offenses involving gambling, bribery,  
434     manufacturing, distributing, importing or possessing child  
435     pornography, computer crime, violations of section 53-395, violations  
436     of section 21a-277 or felonious crimes of violence.

437     Sec. 10. (NEW) (*Effective October 1, 2002*) In the event the wire or  
438     electronic communications intercepted pursuant to an order issued  
439     under section 54-41b of the general statutes, as amended by this act, is  
440     in a code, foreign language or is encrypted and an expert in that code,  
441     foreign language or encryption is not reasonably available during the  
442     interception period, minimization may be accomplished as soon as  
443     practicable after such interception. An interception under said section  
444     54-41b may be conducted in whole or in part by government personnel  
445     or by an individual operating under a contract with the government  
446     acting under the supervision of an investigative officer authorized to  
447     conduct the interception.

448       Sec. 11. (NEW) (*Effective October 1, 2002*) Notwithstanding any other  
 449       provision of this chapter, any investigative officer, specially designated  
 450       by the Chief State's Attorney, the state's attorney for the judicial district  
 451       in which the interception is to be conducted or any attorney within the  
 452       division of criminal justice authorized by the Chief State's Attorney or  
 453       the state's attorney for the judicial district in which the interception is  
 454       to be conducted who reasonably determines that an emergency  
 455       situation exists that involves immediate danger of death or serious  
 456       physical injury to any person that requires a wire, oral or electronic  
 457       communication to be intercepted before an order authorizing such  
 458       interception can, with due diligence, be obtained, and there are  
 459       grounds upon which an order could be entered under this chapter to  
 460       authorize such interception, may intercept such wire, oral or electronic  
 461       communication if an application for an order approving the  
 462       interception is made in accordance with this section within forty-eight  
 463       hours after the interception has occurred, or begins to occur. In the  
 464       absence of an order, such interception shall immediately terminate  
 465       when the communication sought is obtained or when the application  
 466       for the order is denied, whichever is earlier. In the event such  
 467       application for approval is denied, or in any other case where the  
 468       interception is terminated without an order having been issued, the  
 469       contents of any wire, oral or electronic communication intercepted  
 470       shall be treated as having been obtained in violation of this chapter.

471       Sec. 12. (NEW) (*Effective October 1, 2002*) (a) As used in this section,  
 472       the following terms have the following meanings:

473       (1) The terms "electronic communication services" and "remote  
 474       computing services" shall have the same meaning as in the Electronic  
 475       Communications Privacy Act, 18 USC 2701 et seq.;

476       (2) "Properly served" means that a search warrant has been  
 477       delivered by hand or in a manner reasonably allowing for proof of  
 478       delivery if delivered by United States mail, overnight delivery service  
 479       or facsimile to a person; and



480 (3) "Person" means any individual, corporation, limited liability  
481 company, trust, partnership, incorporated or unincorporated  
482 association or any other legal entity.

483 (b) A Connecticut corporation that provides electronic  
484 communication services or remote computing services to the general  
485 public, when properly served with a warrant, court order or subpoena  
486 issued under the laws of another state to produce records that would  
487 reveal the identity of the customers using those services, data stored  
488 by, or on behalf of, the customer, the customer's usage of those  
489 services, the recipient or destination of communications sent to or from  
490 those customers, or the content of those communications, shall  
491 produce such records as if that warrant or order had been issued by a  
492 Connecticut court.

493 (c) A foreign corporation providing electronic communication  
494 services or remote computing services to citizens of this state, when  
495 properly served with a warrant or subpoena issued under the laws of  
496 this state to produce records that would reveal the identity of the  
497 customers using those services, data stored by, or on behalf of, the  
498 customer, the customer's usage of those services, the recipient or  
499 destination of communications sent to or from those customers, or the  
500 content of those communications, shall produce such records.

501 Sec. 13. (NEW) (*Effective October 1, 2002*) (a) A provider of electronic  
502 communication service or remote computing service may disclose a  
503 record or other information pertaining to a subscriber to or customer of  
504 such service to any person other than a governmental entity.

505 (b) A provider of electronic communication service or remote  
506 computing service shall disclose to a governmental entity the name,  
507 address, local and long distance telephone toll billing records,  
508 telephone number or other subscriber number or identity, and length  
509 of service of a subscriber to or customer of such service and the types  
510 of services the subscriber or customer utilized, when the governmental  
511 entity uses an administrative subpoena authorized by any state's

512 attorney, the Commissioner of Public Safety, or an authorized  
513 representative, or chief of police, or an authorized representative. If  
514 any person refuses to obey such subpoena, the superior court for the  
515 judicial district of Hartford-New Britain, or any judge of the court if it  
516 is not in session, shall, upon application of the issuing authority, have  
517 jurisdiction to issue to the person an order requiring him to appear  
518 before the issuing authority or to produce the item requested. The  
519 court or judge shall provide adequate opportunity for the parties to be  
520 heard before issuing such order.

521       Sec. 14. (NEW) (*Effective October 1, 2002*) (a) The contents of  
522 electronic communications in electronic storage may only be provided  
523 to a government entity by an electronic communications service  
524 pursuant to a warrant issued under section 54-33a of the general  
525 statutes.

526       (b) The court or magistrate issuing a warrant for contents of  
527 electronic communications in electronic storage may order the  
528 electronic communications service not to notify the account subscriber  
529 of the issuance or existence of the warrant.

530       (c) The court or magistrate issuing a warrant for contents of  
531 electronic communications may waive required notice to the account  
532 subscriber pursuant to section 54-33c of the general statutes.

533       Sec. 15. (NEW) (*Effective October 1, 2002*) No cause of action shall lie  
534 in any court against any provider of wire or electronic communication  
535 service, its officers, employees, agents or other specified persons for  
536 providing information, facilities or assistance in accordance with the  
537 terms of a warrant issued under section 54-33a of the general statutes  
538 or subpoena issued under section 13 of this act.

539       Sec. 16. (NEW) (*Effective October 1, 2002*) (a) A provider of wire or  
540 electronic communication services or a remote computing service,  
541 upon the request of a governmental entity, shall take all necessary  
542 steps to preserve records and other evidence in its possession pending

543 the issuance of a court order or other process.

544 (b) Such records shall be retained for a period of ninety days which  
545 shall be extended for an additional ninety-day period upon a renewed  
546 request by the governmental entity.

547 Sec. 17. (NEW) (*Effective October 1, 2002*) (a) The governmental entity  
548 may include in its subpoena or warrant a requirement that the service  
549 provider to whom the request is directed create a back-up copy of the  
550 contents of the electronic communications sought in order to preserve  
551 such communications. Without notifying the subscriber or customer of  
552 such subpoena or warrant, such service provider shall create such  
553 back-up copy as soon as practicable consistent with its regular  
554 business practices and shall confirm to the governmental entity that  
555 such back-up copy has been made. Such back-up copy shall be created  
556 within two business days after receipt by the service provider of the  
557 subpoena or court order.

558 (b) Notice to the subscriber or customer shall be made by the  
559 governmental entity within three days after receipt of such  
560 confirmation, unless such notice is delayed pursuant to section 54-33c  
561 of the general statutes.

562 (c) The service provider shall not destroy such back-up copy until  
563 the later of (1) the delivery of the information; or (2) the resolution of  
564 any proceedings concerning the governmental entity's subpoena or  
565 warrant.

566 (d) The service provider shall release such back-up copy to the  
567 requesting governmental entity no sooner than fourteen days after the  
568 governmental entity's notice to the subscriber or customer if such  
569 service provider (1) has not received notice from the subscriber or  
570 customer that the subscriber or customer has challenged the  
571 governmental entity's request; and (2) has not initiated proceedings to  
572 challenge the request of the governmental entity.

573 (e) A governmental entity may seek to require the creation of a  
574 back-up copy under subsection (a) of this section if in its sole  
575 discretion such entity determines that there is a reason to believe that  
576 notification of the existence of the subpoena or warrant may result in  
577 destruction of or tampering with evidence. Such determination is not  
578 subject to challenge by the subscriber or customer or service provider.

579 Sec. 18. (NEW) (*Effective October 1, 2002*) (a) Within fourteen days  
580 after notice by the governmental entity to the subscriber or customer,  
581 such subscriber or customer may file a motion to quash such  
582 subpoena, with copies served upon the governmental entity and with  
583 written notice of such challenge to the service provider. A motion to  
584 quash a subpoena shall be filed with the superior court for the judicial  
585 district of Hartford-New Britain, or any judge of the court if it is not in  
586 session, shall, upon application of the issuing authority, have  
587 jurisdiction. Such motion or application shall contain an affidavit or  
588 sworn statement stating (1) that the applicant is a customer or  
589 subscriber to the service from which the contents of electronic  
590 communications maintained for him or her have been sought, and (2)  
591 the applicant's reasons for believing that the records sought are not  
592 relevant to a legitimate law enforcement inquiry or that there has not  
593 been substantial compliance with the provisions of section 13 of this  
594 act in some other respect.

595 (b) Service shall be made under this section upon a governmental  
596 entity by delivering or mailing by registered or certified mail a copy of  
597 the papers to the person, office or department specified in the notice  
598 which the customer has received pursuant to section 17 of this act.

599 (c) If the court finds that the customer has complied with the  
600 provisions of subsections (a) and (b) of this section, the court shall  
601 order the governmental entity to file a sworn response, which may be  
602 filed in camera if the governmental entity includes in its response the  
603 reasons which make in camera review appropriate. If the court is  
604 unable to determine the motion or application on the basis of the

605 parties' initial allegations and response, the court may conduct such  
606 additional proceedings as it deems appropriate. All such proceedings  
607 shall be completed and the motion or application decided as soon as  
608 practicable after the filing of the governmental entity's response.

609 (d) If the court finds that the applicant is not the subscriber or  
610 customer for whom the communications sought by the governmental  
611 entity are maintained or that there is a reason to believe that the law  
612 enforcement inquiry is legitimate and that the communications sought  
613 are relevant to that inquiry, it shall deny the motion or application and  
614 order such process enforced. If the court finds that the applicant is the  
615 subscriber or customer for whom the communications sought by the  
616 governmental entity are maintained, and that there is not a reason to  
617 believe that the communications sought are relevant to a legitimate  
618 law enforcement inquiry or that there has not been substantial  
619 compliance with the provisions of section 13 of this act, it shall order  
620 the process quashed.

621 (e) A court order denying a motion or application under this section  
622 shall not be deemed a final order and no interlocutory appeal may be  
623 taken therefrom by the customer.

624 Sec. 19. (NEW) (*Effective October 1, 2002*) (a) A governmental entity  
625 obtaining the contents of communications, records or other  
626 information under section 14 of this act shall pay to the person or  
627 entity assembling or providing such information a fee for  
628 reimbursement for such costs as are reasonably necessary and which  
629 have been directly incurred in searching for, assembling, reproducing  
630 or otherwise providing such information. Such reimbursable costs  
631 shall include any costs due to necessary disruption of normal  
632 operations of any electronic communication service or remote  
633 computing service in which such information may be stored.

634 (b) The amount of the fee provided by subsection (a) of this section  
635 shall be mutually agreed by the governmental entity and the person or  
636 entity providing the information, or, in the absence of agreement, shall

637 be as determined by the court which issued the order for production of  
638 such information or the court before which a criminal prosecution  
639 relating to such information would be brought, if no court order was  
640 issued for production of the information.

641 (c) The provisions of subsection (a) of this section do not apply with  
642 respect to records or other information maintained by a  
643 communications common carrier that relate to telephone toll records  
644 and telephone listings. The court may, however, order a payment as  
645 described in subsection (a) of this section if the court determines the  
646 information required is unusually voluminous in nature or otherwise  
647 caused an undue burden on the provider.

648 Sec. 20. (NEW) (*Effective October 1, 2002*) The Chief State's Attorney,  
649 the state's attorney for the judicial district in which the pen register or  
650 trap and trace is to be conducted or any attorney within the division of  
651 criminal justice authorized by the Chief State's Attorney or the state's  
652 attorney for the judicial district in which the pen register or trap and  
653 trace is to be conducted or a law enforcement officer as defined by  
654 subdivision (6) of section 54-41a of the general statutes, as amended by  
655 this act, may make application to any judge of the Superior Court for  
656 an order permitted by 18 USC 3122.

657 Sec. 21. (NEW) (*Effective October 1, 2002*) (a) For the purposes of this  
658 section, "mobile tracking device" means an electronic or mechanical  
659 device which permits the tracking of the movement of a person or  
660 object.

661 (b) Upon complaint on oath by any state's attorney or by two  
662 credible persons, to any judge of the Superior Court that they have  
663 probable cause to believe that any movable property (1) is possessed,  
664 controlled, designed or intended for use or is or has been used or may  
665 be used as the means of committing any criminal offense; (2) was  
666 stolen or embezzled; or (3) constitutes evidence of an offense, or  
667 participated in the commission of an offense or will during the time  
668 authorized by the order participate in the commission of an offense,

669 such judge, except as provided in section 54-33j of the general statutes,  
670 may issue an order commanding a proper officer to install, monitor,  
671 maintain and remove a mobile tracking device, as authorized by 18  
672 USC 3117.

673 (c) Each application for an order authorization installation,  
674 monitoring, maintaining and removing of a mobile tracking device  
675 shall contain (1) a description of the object into which the device is to  
676 be placed, (2) the circumstances that led the state's attorney or two  
677 credible persons to wish to install the device, and (3) the length of time  
678 for which the mobile tracking device surveillance is requested. Any  
679 such order may specifically authorize a proper officer to make  
680 surreptitious entry onto private property in order to install the mobile  
681 tracking device.

682 (d) A mobile tracking device installed in this state may be  
683 monitored if it travels outside the jurisdiction in accordance with the  
684 court order.

685 (e) An order pursuant to this section may be issued for a period not  
686 to exceed thirty days. Upon application for extension of the order, a  
687 judge of the Superior Court may extend the period of the order an  
688 additional thirty days each time application for extension is made.

689 Sec. 22. Section 53a-187 of the general statutes is repealed and the  
690 following is substituted in lieu thereof (*Effective October 1, 2002*):

691 (a) The following definitions are applicable to sections 53a-188 and  
692 53a-189: (1) "Wiretapping" means the intentional [overhearing or  
693 recording of] interception of an electronic communication, a telephonic  
694 or telegraphic communication or a communication made by cellular  
695 radio telephone by a person other than a sender or receiver thereof,  
696 without the consent of either the sender or receiver, by means of any  
697 instrument, device, software or equipment. The normal operation of an  
698 electronic communications service provider, or a telephone or  
699 telegraph corporation and the normal use of the services and facilities

700 furnished by such corporation pursuant to its tariffs shall not be  
 701 deemed "wiretapping". (2) "Electronic communication" means any  
 702 transfer of signs, signals, writing, images, sounds, data or intelligence  
 703 of any nature transmitted in whole or in part by a wire, radio,  
 704 electromagnetic, photoelectronic or photooptical system within the  
 705 state, but does not include (A) any wire or oral communication; (B) any  
 706 communication made through a tone-only paging device; (C) any  
 707 communication from a tracking device; or (D) electronic funds transfer  
 708 information stored by a financial institution in a communications  
 709 system used for the electronic storage and transfer of funds; [(2)] (3)  
 710 "Mechanical overhearing of a conversation" means the intentional  
 711 overhearing or recording of a conversation or discussion, without the  
 712 consent of at least one party thereto, by a person not present thereat,  
 713 by means of any instrument, device or equipment. [(3)] (4)  
 714 "Unlawfully" means not specifically authorized by law. For purposes  
 715 of this section, "cellular radio telephone" means a wireless telephone  
 716 authorized by the Federal Communications Commission to operate in  
 717 the frequency bandwidth reserved for cellular radio telephones.

718 (b) This section and sections 53a-188, as amended by this act, and  
 719 53a-189 shall not apply to wiretapping by criminal law enforcement  
 720 officials in the lawful performance of their duties and do not affect the  
 721 admissibility of evidence in any proceedings other than a prosecution  
 722 for eavesdropping or tampering with private communications.

723 Sec. 23. Section 53a-188 of the general statutes is repealed and the  
 724 following is substituted in lieu thereof (*Effective October 1, 2002*):

725 (a) A person is guilty of tampering with private communications  
 726 when: (1) Knowing that he does not have the consent of the sender or  
 727 receiver, he obtains from an employee, officer or representative of an  
 728 electronic communications service provider, or a telephone or  
 729 telegraph corporation, by connivance, deception, intimidation or in  
 730 any other manner, information with respect to the contents or nature  
 731 of an electronic communication or, a telephonic or telegraphic



732 communication; or (2) knowing that he does not have the consent of  
 733 the sender or receiver, and being an employee, officer or representative  
 734 of an electronic communications service provider, or a telephone or  
 735 telegraph corporation, he knowingly divulges to another person the  
 736 contents or nature of an electronic communication, a telephonic or  
 737 telegraphic communication.

738 (b) Tampering with private communications is a class A  
 739 misdemeanor.

740 Sec. 24. (Effective October 1, 2002) Sections 53a-197 and 53a-198 of the  
 741 general statutes are repealed.

This act shall take effect as follows:	
Section 1	October 1, 2002
Sec. 2	October 1, 2002
Sec. 3	October 1, 2002
Sec. 4	October 1, 2002
Sec. 5	October 1, 2002
Sec. 6	October 1, 2002
Sec. 7	October 1, 2002
Sec. 8	October 1, 2002
Sec. 9	October 1, 2002
Sec. 10	October 1, 2002
Sec. 11	October 1, 2002
Sec. 12	October 1, 2002
Sec. 13	October 1, 2002
Sec. 14	October 1, 2002
Sec. 15	October 1, 2002
Sec. 16	October 1, 2002
Sec. 17	October 1, 2002
Sec. 18	October 1, 2002
Sec. 19	October 1, 2002
Sec. 20	October 1, 2002
Sec. 21	October 1, 2002
Sec. 22	October 1, 2002
Sec. 23	October 1, 2002
Sec. 24	October 1, 2002

**Statement of Purpose:**

To expand the scope of the state's child pornography laws to include computer or electronically generated images or pictures; revise the penal code provisions for child pornography to prohibit the manufacture or distribution of child pornography; update wiretap and eavesdropping definitions to address interception of electronic communications; expand the list of offenses for which a wiretap order can be obtained to include manufacturing, distributing, importing or possessing child pornography or computer crime; include a provisions authorizing wiretaps without an order when there are exigent circumstances involving an immediate danger of death or serious physical injury provided than within forty-eight hours of the interception an order is obtained; authorize administrative subpoenas for Internet subscriber information and search warrants for content information; and provide for the issuance of orders by a state court for pen register (device recording numbers dialed and number of calls received), trap and trace (device recording incoming numbers) and mobile tracking device surveillance in accordance with federal law.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*